Supreme Court, U. S.
FILED
JAN 8 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-998

CHARLES ANDERSON, WARDEN,
STATE PRISON OF SOUTHERN MICHIGAN,

Petitioner,

vs.

BERNARD STROBLE,

Respondent.

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

BRIEF OF THE WAYNE COUNTY PROSECUTING ATTORNEY AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

WILLIAM L. CAHALAN
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State of Michigan

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UNITED STATES SUPREME COURT

CHARLES ANDERSON, Warden,
State Prison for Southern Michigan,

Petitioner

WILLIAM L. CAHALAN,
Prosecuting Attorney, Wayne County,

Amicus Curiae

vs

BERNARD STROBLE,

Respondent

MOTION FOR LEAVE TO FILE A BRIEF OF LAW AS AMICUS CURIAE

WILLIAM L. CAHALAN, Wayne County Prosecuting Attorney; by EDWARD REILLY WILSON, Principal Attorney, Appeals; and TIMOTHY A BAUGHMAN, Assistant Prosecuting Attorney, for the County of Wayne, and on behalf of the People of the State of Michigan and the County of Wayne; moves for leave to file a brief as amicus curiae in support of Petitioner's petition for certiorari, and as reasons says that the Wayne County Prosecutor's Office expended considerable resources in the trial of petitioner and the subsequent appellate actions in the state courts, and that the Wayne County Prosecutor's Office wishes to call to the attention of the Court a jurisdictional argument that has not yet been considered, that is, that the habeas petition presented no federal question, and

that consequently, Respondent has been ordered discharged by a court lacking jurisdiction. See US Steel Corp. v Multistate Tax Comm'n, ____ US ____, 54 LEd 2d 682 (Feb. 21, 1978).

Respectfully submitted,

WILLIAM L. CAHALAN
Prosecuting Attorney
Wayne County
State of Michigan

EDWARD REILLY WILSON
Chief Appellate Attorney

Timothy A Baughman

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Dated: December 15, 1978

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UNITED STATES SUPREME COURT

CHARLES ANDERSON, Warden,
State Prison for Southern Michigan,

Petitioner

WILLIAM L. CAHALAN,
Prosecuting Attorney, Wayne County,

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vs

BERNARD STROBLE,

Respondent

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF MICHIGAN)
COUNTY OF WAYNE) ss.

TIMOTHY A. BAUGHMAN, being duly sworn, deposes and says that he is an Assistant Prosecuting Attorney in the Office of the Prosecuting Attorney for the County of Wayne, State of Michigan.

Further, that affiant has read the foregoing motion as subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be on information and belief, and as to those matters he believes them to be true.

Timothy A Baughman

Timothy A. Baughman

Subscribed and sworn to before me this 15th day of December, 1978.

Essie V. Stevens

Essie V. Stevens
Notary Public, Wayne County, MI
My commission expires: 8/23/81

UNITED STATES SUPREME COURT

CHARLES ANDERSON, Warden,
State Prison for Southern Michigan,

Petitioner

WILLIAM L. CAHALAN,
Prosecuting Attorney, Wayne County,

Amicus Curiae

vs

BERNARD STROBLE,

Respondent

MEMORANDUM OF AMICUS CURIAE IN SUPPORT OF THE PETITION FOR CERTIORARI

INTEREST OF AMICUS CURIAE

The Wayne County Prosecuting Attorney is the chief law enforcement officer of the county, and it was his office that expended time and resources in gaining respondent's first-degree murder conviction, and in securing affirmance of respondent's conviction in the Michigan appellate courts. Although amicus attempted to intervene as a respondent at the federal district level, the court held that since the remedy if habeas was granted in this case was discharge of the prisoner rather than retrial, amicus had an insufficient interest to intervene. Amicus subsequently filed amicus curiae briefs in the federal district court and the Sixth Circuit Court of Appeals. Amicus raised, and now wishes to call to the attention of this Court, a jurisdictional argument which has not yet been fully considered, and which amicus believes is dispositive; that is, that MCLA

780.601 et seq (commonly known as the "Interstate Agreement as to Detainers") is not an "Agreement or Compact" within the meaning of Article I, Section 10, Clause 3 of the United States Constitution so as to require the consent of Congress. Consequently, the construction and application of MCLA 780.601 et seq by the Michigan Appellate Courts raises no federal questions. Respondent has been ordered discharged by a court which lacks jurisdiction.

ARGUMENT

THE INTERSTATE AGREEMENT AS TO DETAINERS, MCLA 780.601 et seq., IS NOT AN "AGREEMENT OR COMPACT" WITHIN THE MEANING OF ARTICLE 1, SECTION 10, CLAUSE 3 OF THE UNITED STATES CONSTITUTION SO AS TO REQUIRE THE CONSENT OF CONGRESS; CONSEQUENTLY THE CONSTRUCTION AND APPLICATION OF MCLA 780.601 et seq. BY THE MICHIGAN APPELLATE COURTS RAISES NO FEDERAL QUESTION.

Respondent has asserted, the District Court agreed, and the Sixth Circuit impliedly agreed, that "a prisoner's rights under the Interstate Agreement are federal rights." The District Court cited Petty v Tennessee-Missouri River Commission, 359 US 275, 279 (1959); Dyer v Sims, 341 US 22, 26 (1951); Delaware River Commission v Colburn, 310 US 419, 427 (1940); United States ex rel Esola v Groomes, 520 F2d 830, 841 (CA 3, 1975, concurring opinion) and League to Save Lake Tahoe Regional Planning Agency, 507 F2d 517, 521 (CA 9, 1974), cert. denied, 420 US 974 (1975). But while it may be true that some compacts give rise to federal rights, privileges, and immunities, not all agreements or compacts do. The Interstate Agreement as to Detainers is an agreement falling without the Compact Clause of the United States Constitution. That Congress did in fact approve the Agreement cannot transform state law into federal law.

In Virginia v Tennessee, 148 US 503; 37 LEd 537 (1892), the United States Supreme Court held that not every interstate compact or agreement fell within the Compact Clause, requiring the consent of Congress:

> There are many matters upon which different states may agree that can in no respect concern the United States . . . If the bordering line of two states should cross some malarious and disease producing district, there could be no possible reason, or any conceivable public grounds to obtain the consent of Congress for the bordering states to agree to unite in draining the district, and thus remove the cause of the disease. So in case of threatened cholera, plague, or other causes of sickness and death, it would be the height of absurdity to hold that the threatened states could not unite in providing means to prevent and repel the invasion of the pestilence without obtaining the consent of Congress . . . If, then, the terms "compact" or "agreement" in the Constitution do not apply to every possible compact or agreement between one state and another, for the validity of which the consent of Congress must be obtained, to what compacts or agreements does the Constitution apply?

The Court went on to answer the question it posed:

> ....it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in states, which may encroach upon or interfere with the just supremacy of the United States. Story. . . observes that its language "may be more plausibly interpreted from the terms used, 'treaty, alliance, or confederation', andupon the ground that the sense of each is best known by its association (noscitur a socilis) to apply to treaties of a political character; such as treaties of alliance for purposes of peace and war; and treaties of confederation, in which parties

> are leagued for mutual government, political cooperation and the exercise of political sovereignty or conferring internal political jurisdiction, or external political dependence, or general commercial privileges; and that "the later clause, 'compacts and agreements', might then very properly apply to such as regarded what might be deemed mere private rights of sovereignty; such as questions of boundry; interests in land situated in the territory of each other; and other internal regulations for the mutual comfort and convenience of states bordering on each other." (Emphasis added)

Tenessee and Virginia had agreed to a boundary. As the agreement merely served to define that which had existed but was undefined, and did not increase or alter the political power or influence of the states affected, there was no encroachment of Federal authority and the consent of Congress was not required to validate the agreement. See also Landes v Landes, 135 NE 2d 562 (NY, 1956) and Duncan v Smith, 262 SW 2d 373 (KY, 1953) stating that compacts between states which require the consent of Congress are those tending to increase the political power in the states or which interfere with the just supremacy of the United States or its political integrity.

In Tobacco Co. v Department of Revenue, 322 Mich 519 (1948) an agreement between state agencies charged with enforcing cigarette tax laws to exchange lists of customers of licensees was attacked on several grounds, one being that the consent of Congress was required for such an agreement. Quoting Dixie Wholesale Grocery v Martin, 129 SW 2d 181 (Kentucky) which cited Virginia v Tenessee, supra, the court turned aside the challenge:

> ". . .the inhibition in this section (Article I, Section 10, Clause 3) only applies to political alliances which may encroach upon the supremacy of the United States." 322 Mich at 526

Kinnear v Hertz Corporation, 545 P 2d 1186 (Wash, 1976) held the Multistate Tax Compact, providing for joint audits of corporations operating multistate businesses, to fall without the Compact Clause, citing Virginia v Tennessee, supra, as the compact did not interfere with the supremacy of the United States. Note also the cases cited at 545 P 2d at 1190.

This Court only recently exhaustively analyzed the meaning of the compact clause in U.S. Steel v Multistate Tax Comm'n, ___ US ___, 54 LEd 2d 682 (2-21, 1978). The Court reaffirmed that the view that the Compact Clause is limited to agreements tending to increase the political power of the states, which may encroach upon or interfere with the just supremacy of the United States, stating "This rule states the proper balance between federal and state power with respect to compacts and agreements among states." 54 LEd at 701.

The compacts cited by the district court fall within the definition of those compacts which require the consent of Congress. See e.g. League to Save Lake Tahoe, supra, where the court found that the compact dealt with concerns and interests beyond those of the states involved. 507 F 2d at 523-524. The Interstate Agreement as to Detainers was established to "encourage the expeditious and orderly disposition" of detainers based on untried indictments, informations or complaints so as to secure speedy trials and proper prisoner treatment and rehabilitation. MCLA 780.601, Article I. Such a purpose clearly does not increase the political power of the signatory states or interfere with the political integrity of the United States. The Agreement thus does not fall within Article I, Section 10, Clause 3 of the United States Constitution, and the consent of Congress is not required. Again, that Congress consent-

ed where consent was not necessary cannot transform state law into federal law. Petitioner's challenge to the construction and application of MCLA 780.601 et seq consequently does not meet the requirements of 28 USC s. 2254 which provides for habeas corpus jurisdiction for a state prisoner only when he alleges that he is in custody in violation of the Constitution or the laws of the United States upon exhaustion of state remedies. The state appellate court's findings that the adjournment was for "good cause" and that the Agreement was not violated where defendant was tried within 120 days on one charge, and delayed trial on the second charge himself by attacking the jurisdiction of the trial court in federal court 12 days prior to trial, should be respected by this court as a construction and application of state law. The petition for a writ of habeas corpus should have been dismissed.

CONCLUSION

WHEREFORE, amicus submits that an issue requiring plenary review is presented such that this Court should grant certiorari and direct that the parties brief the issue.

Respectfully submitted,

WILLIAM L. CAHALAN
Prosecuting Attorney

EDWARD REILLY WILSON
Principal Attorney, Appeals

Timothy A Baughman

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